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October 25, 2021

Board of Directors
Triunfo Water & Sanitation District
Ventura County, California

**CONTRACT FOR ASPHALT REHABILITATION AT THE KILBURN WATER RESERVOIR
CONTRACT NO. T21-005 – TORO ENTERPRISES, INC.**

Summary

In May 2019, Verizon Wireless initiated a project to modify its tower structure at the Kilburn water reservoir. Their contractor, as part of the planned work, over-excavated an area next to the reservoir and created a potential hazardous situation that threatened the stability of the reservoir. The subsequent work to address this unanticipated issue and to complete the planned work, the Contractor's efforts resulted in significant damage to the existing reservoir site asphalt. Following negotiations with Verizon, Verizon has agreed to rehabilitate the asphalt apron encircling the reservoir site. However, the reservoir access road is also in failing condition and is in need of rehabilitation. Combining the access road with the apron rehabilitation work into one project would address the overall failing condition of the site asphalt and result in a cost savings for the District when compared to separate projects.

Following a series of negotiations with the various paving contractors and Verizon, staff obtained a responsive proposal from Toro Enterprises, Inc. for completing the work. Their estimate for the complete effort is \$155,625 and the District's cost breakdown is as follows:

Cost of complete work	\$155,625
Apron portion of the work (Verizon)	(\$44,475)
Access road portion (District)	\$111,150
Verizon reimbursement for District expenses	(\$34,764)
=====	
CIP cost to District for access road work	\$76,386

Staff recommends the Board approve a contract for \$155,625 with a term ending January 31, 2022 for Toro Enterprises, Inc. to rehabilitate the access road and apron at the Kilburn water reservoir. Additionally, staff will coordinate inspection of the work with one of the inspection companies the District has under contract.

District Legal Counsel has reviewed the respective contract and has approved it as to form and content.

Please contact me at 805-658-4621 or email marknorris@trionfowsd.com if you have any questions or need additional information.

Fiscal Impact

The \$155,625 cost for these services will be offset by a \$79,239 reimbursement from Verizon Wireless Services. This cost is not included in the CIP portion of the FY2021-2022 Adopted Budget and will require a budget adjustment. The to-be-determined cost for inspection will also need to be included in the adjustment.

Recommendation

It is recommended the Board:

- A. Authorize the Chair to sign TWSD Contract No. T21-005 for Toro Enterprises, Inc. for replacement of the asphalt access road and repair of the apron area at Kilburn in the amount of \$155,625 with a term to January 31, 2022; and
- B. Approve the Director of Finance to increase the CIP budget (Project #222905) by \$155,625 plus the to-be-determined cost of inspection.

REVIEWED AND APPROVED:



Mark Norris - General Manager

Attachment: TWSD Contract No. T21-005

CONTRACT NO. T21-005

**AGREEMENT FOR SERVICES
BETWEEN
TRIUNFO WATER & SANITATION DISTRICT
AND
TORO ENTERPRISES, INC.**

THIS AGREEMENT is made and entered into this into this 25th day of October, 2021, by and between the TRIUNFO WATER & SANITATION DISTRICT, a public agency formed pursuant to California Health & Safety Code Section 4700 et seq., hereinafter "DISTRICT," and TORO ENTERPRISES, INC., a California corporation, hereinafter "CONSULTANT." Together, DISTRICT and CONSULTANT shall be referred to herein as Parties.

RECITALS

A. DISTRICT has a need to engage a company for replacement of the asphalt access road and repair of the apron area at the Kilburn Water Reservoir in Oak Park, CA.

B. DISTRICT has selected CONSULTANT, as best qualified, based on CONSULTANT's proposal for the work compared to other proposals. The District evaluated the firm's experience and understanding of the project in residential surroundings.

C. CONSULTANT represents it possesses the necessary skills and experience to perform the required services and is willing to contract with DISTRICT.

D. The parties enter into this Agreement to set forth their respective rights and obligations.

AGREEMENT

ARTICLE 1: WORK STATEMENT

A. CONSULTANT shall provide removal and replacement of the asphalt access road and repair of the apron area at the Kilburn Water Reservoir, including the installation of a new berm, hereinafter referred to as the "Project," as described in the document entitled "Scope of Work" attached as Exhibit "A" and incorporated by reference herein. In the event of any conflict between the terms of this Agreement and those contained in Exhibit "A," the terms in this Agreement shall govern.

B. CONSULTANT shall designate a representative who shall represent CONSULTANT and be its sole contact and agent in all consultations with DISTRICT during fulfillment of the terms of this Agreement. CONSULTANT's representative shall be Sean Castillo, President. In the event Mr. Castillo becomes unavailable, CONSULTANT shall immediately designate another representative satisfactory to DISTRICT. CONSULTANT shall use its best efforts in providing services to DISTRICT and shall cooperate with DISTRICT and provide DISTRICT with all available information and assistance in relation to the Project.

C. DISTRICT and CONSULTANT shall discuss Project prior to commencing work under this Agreement. DISTRICT will provide CONSULTANT with a written authorization to proceed. CONSULTANT shall indicate acceptance of the Project by signing and returning a copy of the

authorization to DISTRICT within five (5) days.

D. CONSULTANT warrants that its services shall be performed, within the limits prescribed by DISTRICT, in a manner consistent with the level of care and skill ordinarily exercised by other professionals under similar circumstances at the time its services are performed.

ARTICLE 2: TERM OF CONTRACT

Unless otherwise earlier terminated, this Agreement shall continue in force until the services specified herein have been fully performed. Upon execution of this Agreement by both parties, CONSULTANT shall diligently pursue work to assure completion on a timely basis. Unless otherwise extended in writing by both parties, this contract shall automatically terminate on January 31, 2022.

ARTICLE 3: INDEPENDENT CONTRACTOR RELATIONSHIP

A. It is expressly understood between the parties that no employee/employer relationship is intended, the relationship of CONSULTANT to DISTRICT being that of an independent contractor. DISTRICT shall not be required to make any payroll deductions or provide Workers' Compensation insurance coverage or health benefits or retirement benefits to CONSULTANT.

B. CONSULTANT is solely responsible for selecting the means, methods and procedures for performing its services hereunder as assigned by DISTRICT and for coordinating all portions of the work so the result will be satisfactory to the DISTRICT.

C. CONSULTANT, pursuant to this Agreement, is rendering professional services only and any payments made to it are compensation solely for such services.

ARTICLE 4: COMPLIANCE WITH LAWS

CONSULTANT shall give any notice to third parties required for CONSULTANT's work. CONSULTANT shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority in performing CONSULTANT's work.

ARTICLE 5: CONFIDENTIAL RELATIONSHIP/TITLE TO DOCUMENTS

CONSULTANT agrees that all dealings of the parties under this Agreement shall be confidential and no report, data, information or communication developed, prepared or assembled by CONSULTANT under this Agreement, or any information made available to CONSULTANT by DISTRICT, shall be revealed, disseminated or made available by CONSULTANT to any person or entity other than DISTRICT without the prior written consent of DISTRICT. All data, calculations, drawings and other documents developed, prepared, completed or acquired by CONSULTANT during the performance of its services hereunder shall be turned over to DISTRICT upon termination of this Agreement.

ARTICLE 6: PAYMENT TO CONSULTANT

A. In consideration of CONSULTANT's performance of services as described herein, DISTRICT shall pay CONSULTANT fees for its services according to the schedule of rates set forth in Exhibit "A." On or prior to the tenth day of each calendar month after actual work is started, CONSULTANT shall submit an invoice in sufficient detail to show the total amount of work done and materials furnished by CONSULTANT and incorporated into the work to the last day of the month preceding the one in which the invoice is submitted. When possible, such invoice shall include the name and title of each person performing work, date and brief description of the work performed, number and type of hours worked,

and labor rate. DISTRICT shall review and approve CONSULTANT's invoice for accuracy and agree with CONSULTANT on any adjustments that may be appropriate. Such approvals shall not be unreasonably withheld. DISTRICT shall pay CONSULTANT for all approved work and materials within 30 days of agreement on the amount of the invoice. In the event of disagreement with CONSULTANT on adjustments or disallowances, said amounts and disputes shall be withheld until resolved. Upon resolution of the disagreements, payment of the approved amount shall be made within 30 days after deducting therefrom all previous payments and all sums to be retained under the terms of the agreement.

B. Total fees to be paid by DISTRICT to CONSULTANT for CONSULTANT's services described herein shall not exceed \$155,625 without written amendment hereto.

C. No payment made under this Agreement, except the final payment, shall be conclusive evidence of CONSULTANT's performance of the Agreement, either wholly or in part, and no payment shall be construed to be an acceptance of CONSULTANT's services performed. DISTRICT shall provide CONSULTANT with written documentation of completion of work along with final payment.

ARTICLE 7: CHANGE ORDERS

No change to Exhibit "A" hereto, or to any other provision of this Agreement, may be made except by a written amendment signed by CONSULTANT and DISTRICT. DISTRICT General Manager or his designee shall be authorized to approve changes to this Agreement in a manner consistent with the provisions of District Resolution No. T01-05.

ARTICLE 8: SUSPENSION OR TERMINATION OF CONTRACT

All work shall be done in a diligent and professional manner to DISTRICT's satisfaction. CONSULTANT specifically acknowledges and agrees that DISTRICT may suspend or terminate CONSULTANT's services at any time with or without cause, regardless of whether CONSULTANT's services or the Project are completed. Any termination or any special instructions hereunder from DISTRICT shall be made in writing. In the event of such termination or suspension exceeding three (3) months, CONSULTANT shall have the right to expend additional time to assemble the work in progress for the particular section of work for the purpose of proper filing and closing the job. Such additional time shall not exceed ten percent of the total time expended on the section or sections of work suspended at and to the date of the notice of suspension or termination, and shall not increase CONSULTANT's total compensation beyond the maximum stated in Article 6.

In the event suspension of services exceeds twelve (12) months in duration, CONSULTANT may, by not less than thirty (30) days' written notice, terminate the services as they apply to the suspended portion of the project. In the event this Agreement is terminated by either DISTRICT or CONSULTANT, all reports, specifications and appurtenant data shall be delivered by CONSULTANT to DISTRICT and may be used by DISTRICT.

ARTICLE 9: INDEMNIFICATION AND HOLD HARMLESS

CONSULTANT agrees to defend, indemnify and hold harmless DISTRICT and VRSD, and their officers, agents and employees, from and against any and all liability, damages, costs, losses, claims and expenses asserted against or incurred by DISTRICT to the extent arising out of, pertaining to, or relating to the negligence, recklessness or willful misconduct of CONSULTANT. CONSULTANT's duty to indemnify, including the duty and cost to defend shall not exceed CONSULTANT's proportionate percentage of fault. CONSULTANT's obligations herein shall be construed in a manner consistent with California Civil Code Section 2782.8.

Submission of insurance certificates or other proof of compliance with the insurance requirements herein shall not relieve CONSULTANT from liability under this indemnification and hold harmless section. The obligations of this section shall apply whether or not such insurance policies shall have been determined to be applicable to any of such liability, damages, costs, losses, claims or expenses.

ARTICLE 10: INSURANCE

CONSULTANT shall provide and keep in effect during the term of this Agreement insurance as follows:

- A. Workers' Compensation and Employer's Liability in accordance with applicable laws.
- B. Comprehensive Commercial Liability policies with combined single limit coverage of \$2,000,000 for any personal injury, death, or property damage.
- C. Comprehensive Automobile Liability policies with combined single limit coverage of \$2,000,000 for personal injury, death, or property damage.
- D. Employer's Liability: \$2,000,000 per accident for bodily injury or disease

CONSULTANT shall provide certificates of such insurance to DISTRICT and VRSD prior to the start of work. Said certificates shall specifically provide that: (1) DISTRICT and VRSD are additional insureds for the coverage in Items B, C, and D above; (2) any other insurance coverage applicable to the loss shall be deemed excess coverage and CONSULTANT's insurance shall be primary for the coverage in Items B, C, and D above; and (3) such insurance shall not be terminated or canceled without thirty (30) days' prior written notice having been given DISTRICT and VRSD at their addresses set forth in this Agreement, except that ten (10) days' written notice shall be acceptable in the case of cancellation for nonpayment.

ARTICLE 11: SUBCONTRACTORS

This Agreement is a personal services contract and the consulting work hereunder shall not be delegated or assigned by CONSULTANT to any person or entity without the consent of DISTRICT. Breach of this provision shall be grounds for immediate termination of this Agreement.

ARTICLE 12: NOTICES

All notices or other official correspondence relating to contractual matters between the parties shall be made by depositing the same as first-class, postage paid mail addressed as follows:

To CONSULTANT: Sean Castillo, President
TORO ENTERPRISES, INC.
PO Box 6285
Oxnard, CA 93031

To DISTRICT: Finance & Administration
TRIUNFO WATER & SANITATION DISTRICT
1001 Partridge Drive, Suite 100
Ventura, California 93003-0704

With a copy to: ARNOLD LAROCHELLE MATHEWS VANCONAS & ZIRBEL LLP
300 E. Esplanade Drive, Suite 2100
Oxnard, CA 93036

or to such other address as either party may designate hereinafter in writing delivered to the other party. All notices shall be deemed to have been received three (3) days after mailing.

ARTICLE 13: NO WAIVER

No failure or delay by DISTRICT in asserting any of DISTRICT's rights and remedies as to any default of CONSULTANT shall operate as a waiver of the default, of any subsequent or other default by CONSULTANT, or of any of DISTRICT's rights or remedies. No such delay shall deprive DISTRICT of its right to institute and maintain any action or proceeding which may be necessary to protect, assert or enforce any rights or remedies arising out of this Agreement or the performance of this Agreement.

ARTICLE 14: PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated thereby.

ARTICLE 15: TERMS

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties. No oral understanding or agreement not incorporated herein shall be binding on any of the parties.

ARTICLE 16: INCORPORATION OF RECITALS

The foregoing recitals are incorporated herein as though fully set forth.

ARTICLE 17: CALIFORNIA LAW

This Agreement shall be interpreted and construed pursuant to the laws of the State of California. The parties agree that should litigation arising from this Agreement be commenced within California, such litigation shall occur within a court of competent jurisdiction within the County of Ventura.

ARTICLE 18: ADDITIONAL PROVISIONS

CONSULTANT agrees that no regular employee of DISTRICT or VRSD shall be employed by its firm during the period that this Agreement is in effect.

ARTICLE 19: EXECUTION IN COUNTERPARTS

This Agreement and any amendments hereto may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original, but all such counterparts shall constitute one and the same Agreement, as may be amended from time to time. Delivery of an executed counterpart of a signature page to this Agreement by facsimile, PDF or other electronic means shall have the same impact and effect as original counterparts and shall be valid, enforceable and binding.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

TRIUNFO WATER & SANITATION DISTRICT

TORO ENTERPRISES, INC., a California corporation

By _____
RAYMOND TJULANDER, Chair
Board of Directors

By _____
SEAN CASTILLO, President

APPROVED AS TO FORM:

By _____
JOHN MATHEWS
Legal Counsel for DISTRICT

ATTEST:

By _____
JULIET RODRIGUEZ
Clerk of the Board

EXHIBIT A



Proposal and Contract

Toro Enterprises, Inc.
 P.O. Box 6285
 Oxnard, CA. 93031
 P: 805-483-4515
 F: 805-483-2001

09/22/2021

www.toroenterprises.com

License No. 710580 A

CA DIR #1000002410

Toro Enterprises, Inc. Is an
 Equal Opportunity Employer

QUOTE Triunfo Water & Sanitation District- Water Tank Site Paving 11269-Rev-1

TO Triunfo Water & Sanitation District
 1001 PARTRIDGE DR.
 VENTURA, CA 93003-5562
 (805) 658-4677

Client #	Description	Quantity	U/M	Unit Price	Ext Price
GENERAL CONDITIONS					
1	MOBILIZATION	1.000	LS	\$5,500.00	\$5,500.00
2	TRAFFIC CONTROL	1.000	LS	\$8,000.00	\$8,000.00
GENERAL CONDITIONS TOTAL					\$13,500.00
OPTION#1 1.5" AC MILL & OVERLAY					
3	GATE AREA: 1.5" DEPTH AC MILL & 1.5" AC OVERLAY	6,500.000	SF	\$ 5.35	\$34,775.00
4	FOG-SEAL COAT(SS-1H) IN BETWEEN TANK FOOTINGS	500.000	SF	\$ 5.90	\$2,950.00
OPTION#1 TOTAL					\$37,725.00
OPTION#2 4" AC REMOVE & REPLACE					
5	AC DIKE / BERM	300.000	LF	\$ 18.00	\$5,400.00
6	REMOVE & REPLACE ASPHALT AT ACCESS ROAD	18,000.000	SF	\$ 5.50	\$99,000.00
OPTION#2 TOTAL					\$104,400.00
Grand Total:					\$155,625.00

Date: _____ Accepted By: _____

Important Bid Note:

- A. *Prices in Toro's bid for this project are based in part on labor and materials cost that were in effect on the date of Toro's final bid. Due to dynamic market conditions, labor & materials cost are expected to rise during the life of this project. Therefore, by entering into Contract with Toro, project Owner and/or GC agree to pay Toro for price escalation in labor and/or materials that occurred during the life of this project. In such cases, the burden of proof to demonstrate escalated cost of labor and/or materials shall rest solely on Toro, and it shall consist of proving documented difference between labor and/or materials prices on final bid date vs. prices at any given date during the life of the project. Payment to Toro for escalated prices of labor and/or materials shall be limited to actual proven cost increase, without any markup.*

- B. *In case that actual number of Mobilizations per specific discipline and/or phase exceed the number stipulated in Toro's Bid, then each additional mobilization for such discipline and/or phase shall be paid to Toro as an extra at unit price stipulated in the Bid. One continued operation per period in specific discipline and/or phase counts for one mobilization in that discipline and/or phase.*

- C. *No existing asphalt will be removed and replaced between tank footings. This area is small and no equipment will be able to fit in that tight area. These areas will be fog seal coated. Area around water tank will be squared off in order to avoid areas in between tank footings. Additionally, there will be about a 1' strip along existing walls/fence as grinder will not be able to grind that close to wall/fence.*

STANDARD CONDITIONS

- 1. THE ABOVE PRICES EXPIRE ON 9/30/21
- 2. ALL PROPOSALS MUST BE SIGNED AND RETURNED WITHIN 30 DAYS OF BID IN ORDER TO SECURE MATERIAL PRICES AND AVAILABILITY.
- 3. THE ABOVE PRICE IS BASED ON 1 MOVE IN.
- 4. VENTURA REGIONAL SANITATION DISTRICT TO PROVIDE CONSTRUCTION WATER.
- 5. PRICES ARE SUBJECT TO CHANGE IF THERE ARE ANY VARIATIONS TO THE ABOVE QUALIFIED STRUCTURAL SECTIONS AND FINISH.
- 6. PRICING IS FOR ONLY THE ITEMS OUTLINED ABOVE. IT SHOULD NOT BE INFERED THAT ANY OTHER ITEMS SHOWN ON THE PLANS IS INCLUDED IN OUR SCOPE OF WORK.
- 7. THIS PROPOSAL AND TERMS MUST BE ACCEPTED AS PART OF THE CONTRACT AND SO SPECIFIED IF A SPECIAL CONTRACT FORM IS USED.
- 8. FOUR WEEK ADVANCE NOTICE IS REQUIRED FOR SCHEDUELING.
- 9. IF ROCK OR ANY OTHER UNSUITABLE MATERIAL IS ENCOUNTERED IT WILL BE PAID ON A TIME AND MATERIAL BASIS.
- 10. REMOVAL OR HANDLING OF WET OR UNSUITABLE MATERIAL WILL BE PAID FOR ON A TIME AND MATERIAL BASIS.
- 11. THE ABOVE BID IS NOT DIVISIBLE. ALL ITEMS IN THIS QUOTATION MUST BE ACCEPTED FOR THE PRICES SET FORTH ABOVE TO BE EFFECTIVE.
- 12. ENGINEERING COMPACTION TEST TO BE PROVIDED BY OTHERS.
- 13. QUANTITIES ARE APPROXIMATE AND ACTUAL QUANTITIES WILL BE FIELD MEASURED AT COMPLETION OF WORK TO DETERMINE PAYMENT AT THE ABOVE UNIT PRICES.
- 14. TORO ENTERPRISES, INC. IS NOT RESPONSIBLE FOR DAMAGE TO CONCRETE AND/OR UTILITIES CAUSED BY OTHERS.
- 15. ALL UNIT PRICES ARE SUBJECT TO THE AVAILABILITY OF MATERIALS FROM LOCALLY APPROVED SUPPLIERS.

STANDARD EXCLUSIONS

1. REMOVAL AND REPLACING OF GRINDING/PAVING WORK IN BETWEEN TANK FOOTINGS
2. CONSTRUCTION WATER
3. ENGINEERING, TESTING, PERMITS, BONDS, SURVEY STAKING, SPECIAL INSURANCE.
4. REMOVAL/REPLACEMENT/RELOCATION OF WATER METER BOXES/VALVES/UTILITIES
5. STRIPING, MARKING, AND SIGNAGE.
6. CLEARING AND GRUBBING, TREE REMOVAL
7. ROOT PRUNING OR GRINDING.
8. REMOVAL OR HANDLING OF HAZARDOUS, TOXIC AND LEAD MATERIALS IS EXCLUDED.
9. CURB BACKFILL
10. STORM WATER POLLUTION CONTROL PLAN OR IMPLEMENTION.
11. COMPACTION TESTING
12. WEED KILL
13. EROSION CONTROL
14. TORO ENTERPRISES, INC. ASSUMES NO RESPONSIBILITY FOR SETTLEMENT WITHIN THE LIMITS OF UTILITY TRENCHES DONE BY OTHERS.
15. REDWOOD HEADER
16. SUBGRADE PREPARATION
17. BASE MATERIAL
18. ROOT BARRIER
19. DEWATERING
20. HOME OWNER NOTIFICATION
21. LANDSCAPE RESTORATION
22. IRRIGATION RELOCATION/RESTORATION
23. INSTALLATION AND/OR RELOCATION AND/OR HANDLING OF TEMPORARY AND/OR PERMANENT FENCING OF ANY KIND. IN CASE OF ANY FENCING WORK DIRECTED BY OWNER OR GC, SUCH WORK WILL BE CONSIDERED AS EXTRA WORK, AND TORO SHALL BE PAID FOR IT ON T&M BASIS.

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